1	SHEPPARD, MULLIN, RICHTER & HAMPTON LLP A Limited Liability Partnership Including Professional Corporations NEIL A.F. POPOVIĆ, Cal. Bar No. 132403 ANNA S. McLEAN, Cal. Bar No. 142233 TENAYA RODEWALD, Cal. Bar No. 248563 LIÊN H. PAYNE, Cal. Bar No. 291569 JOY O. SIU, Cal. Bar. No. 307610 Four Embarcadero Center, 17 th Floor San Francisco, California 94111-4109	
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9	jsiu@sheppardmullin.com	
10	Attorneys for Defendant SEAGATE TECHNOLOGY, LLC	
11	LINITED STATES	DISTRICT COURT
12	NORTHERN DISTRICT OF CALIFORNIA	
13	SAN FRANCISCO DIVISION	
14		
15	IN RE SEAGATE TECHNOLOGY, LLC	Case No. 3:16-cv-00523 JCS
16	LITIGATION	DECLARATION OF JEFF FOCHTMAN
17 18	CONSOLIDATED ACTION	IN SUPPORT OF SEAGATE'S OPPOSITION TO PLAINTIFFS' MOTION FOR CLASS CERTIFICATION
19		Judge: Hon. Joseph C. Spero
20		Date: March 30, 2018 Time: 9:30 a.m.
21		Dept.: Courtroom G
22		Filed Concurrently with DEFENDANT SEAGATE TECHNOLOGY LLC'S OPPOSITION TO MOTION FOR CLASS
23		CERTIFICATION CERTIFICATION
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SMRH:485057864.1

Case No. 3:16-ev-00523 JCS FOCHTMAN DECLARATION ISO CLASS CERTIFICATION OPPOSITION I, Jeff Fochtman, declare as follows:

- 1. I have personal knowledge of the facts set forth in this declaration, and, if called as a witness, could and would competently testify to their truth.
- 2. I have worked at Seagate Technology LLC ("Seagate" or the "Company") for a total of ten years, first from October 2007–October 2009 and again from April 2012 to the present.
- 3. I am currently employed as Seagate's Vice President of Global Marketing. From April 2012–August 2016, I was employed as Senior Director of Global Marketing. From October 2007–October 2009, I was employed as Director of Consumer Product Marketing. Although my level of seniority and responsibility has increased as my title changed, my duties in each role have involved managing Seagate's brand and marketing strategies, competitive analysis, and campaign creation. These duties all involve marketing Seagate hard drives ("HDDs").
- 4. It is my understanding that Seagate HDDs with model ST3000DM001 (the "Drives") are at issue in this action. The Drives were marketed under numerous names. The internal products ("Internal Products") containing the Drives at issue are: Barracuda and Desktop HDD Internal Kit. The external products ("External Products") containing the Drives at issue are: Backup Plus Desk, Backup Plus for Mac, Expansion Desk, Expansion Desk Plus, GoFlex Desk for Mac, FreeAgent GoFlex Home, FreeAgent GoFlex Desk, Business 1 Bay NAS, Business 2 Bay NAS, and Business 4 Bay NAS.

General Marketing of Seagate Products

5. Seagate does not publish marketing materials (including Product Manuals, Data Sheets, and Storage Solutions Guides) specific to the ST3000DM001 drive alone. Instead, Seagate publishes marketing materials for specific products. The Internal and External Products were either exclusively or partially manufactured with the ST3000DM001. In general, marketing materials for Seagate's external products do not reference internal drive ST numbers, therefore, marketing materials for the External Products at issue here would not have referenced the ST3000DM001. Marketing materials for the Internal Products may have referenced the ST3000DM001, but there are no marketing materials for the ST3000DM001 itself.

Packaging Box Marketing for Products Containing the Drives

- 7. Joy Basa, a Packaging Program Manager at Seagate, gathered all available packaging box marketing from 2011 to February 2016 for both the Internal and External Products. Ms. Basa relayed that the artwork is the only artwork available from Seagate's packaging artwork repository. To the best of my knowledge, all of these materials have been produced to Plaintiffs in this litigation and those attached hereto as **Exhibit 1** are true and correct copies.
- 8. Seagate never made any AFR representations on the packaging box marketing for the Internal or External Products.

Combined AFR Publication of "0.34%, 1%" on Website

- 9. I understand that Plaintiffs claim Seagate published an AFR specification of "0.34%, 1%" for products containing the Drives on its website at certain points in time. *See* Motion, 7:1-2. This is not the case. Plaintiffs refer to archived copies of Seagate's webpages marketing the Barracuda on April 28, 2012 and January 17, 2013 found on the Wayback machine (Internet Archive). *Id.* (citing Hospodor Declaration).
- 10. I have reviewed the archived copies of Seagate's website to which Plaintiffs refer. At these times, Seagate's website had summaries that combined information for many models and sizes of drives together. As shown in the images below, the website grouped information for all capacities of Barracuda drives (from 160GB 3TB), with different speeds (5900RPM, 7200RPM) different amounts of cache (8MB, 16MB, 32MB, 64MB), different physical dimensions (including heights of 19.98mm, 20.17mm, 26.1mm), different areal densities, etc. The website clearly stated that visitors could "Compare Barracuda Desktop Hard Drive

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Models." The combined AFR specification of "0.34%, 1%" was not an AFR representation for the Barracuda product.

April 28, 2012 Barracuda Marketing Webpage

(https://web.archive.org/web/20120428124406/http://www.seagate.com:80/internal-hard-

drives/desktop-hard-drives/)

1. "At A Glance" Tab. The circled text shows that the various drives range from Capacities of 160 GB – 3TB, have different Spindle Speeds (5900RPM and 7200RPM) and have different amounts of Cache (8MB, 16MB, 32MB, 64MB). The highlighted text invites users to "Compare Barracuda Desktop Hard Drive Models."



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(https://web.archive.org/web/20130117005718/http://www.seagate.com/internal-hard-

drives/desktop-hard-drives/)

2. "Features" Tab. Although it is difficult to discern in this image, the "Height" specification (highlighted) lists three different heights. The "Areal Density" specification also lists a variety of areal densities.

PRODUCT INTERFACES HEIGHT AREAL DENSITY PRODUCT NAME FORM FACTOR e capacity up to 3TB Barracuda formance by up to 459 read/write perform 329 Gfc/in^2Gb/in², 329Gb/in², 625 ATA/IDE, SATA, SATA 1.5Gb/s, SATA 3Gb/s, SATA 6Gb/s 19.98mm, 20.17mm, Gfc/in^2Gb/in², 625Gb/in² 👺 Barracuda Data Sheet (455KB) AT A GLANCE **SPECIFICATIONS**

3. "Specifications" Tab. This specifications tab lists two different AFRs ("0.34%, <1%") for the different sizes of Barracuda drive. It also lists four different "Average Operating Power" specifications ("5.9W, 6.19W, 6.7W, 8.0W").



Like the tabs above, the tabs from January 17, 2013 list multiple sizes (Capacities), Spindle Speeds, Cache sizes, Areal Densities, Average Operating Power specifications, and two different AFRs.

1. "At A Glance" Tab.

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2. "Features" Tab.



3. "Specifications" Tab.

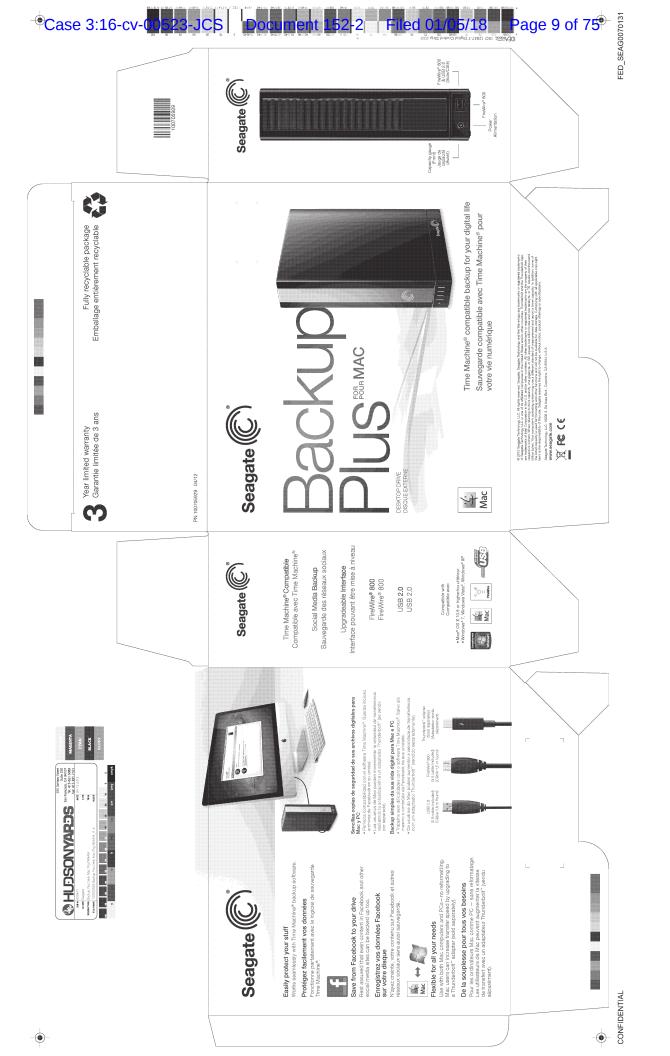


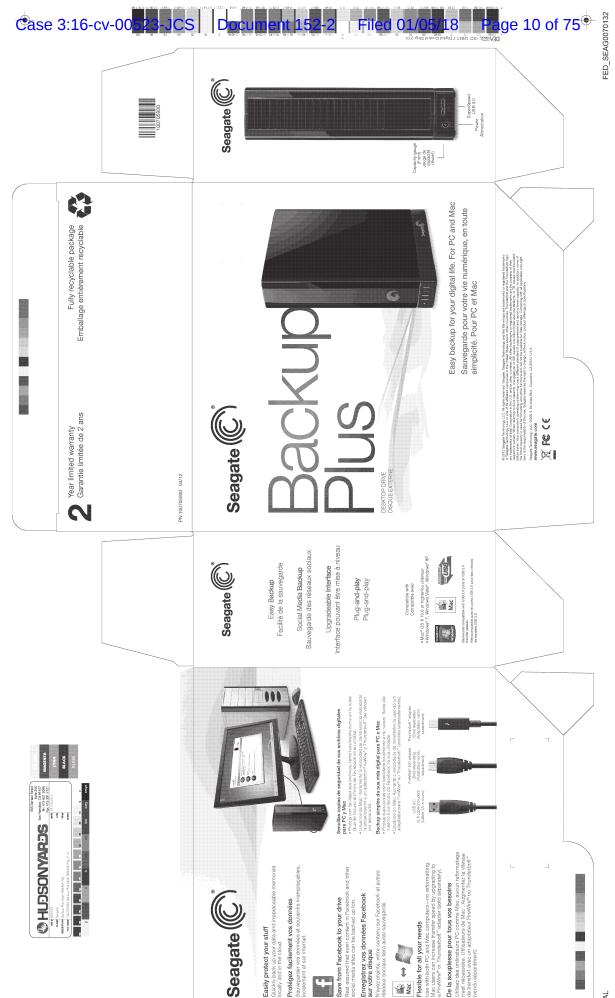
Executed on this 5th day of January, 2018, at Tracy, California.



Jeff Fochtman

EXHIBIT 1





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l'ayez crainte, votre contenu sur Facebook et autres éseaux sociaux sera aussi sauvegardé.

Flexible for all your needs

↑ Wac

Enregistrez vos données Facebook sur votre disque Save from Facebook to your drive Rest assured that even content in Facebook social media sites can be backed up too.

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Protégez facilement vos données Sauvegarder vos données et souvenirs i ocalement et sur Internet.

Easily protect your stuff

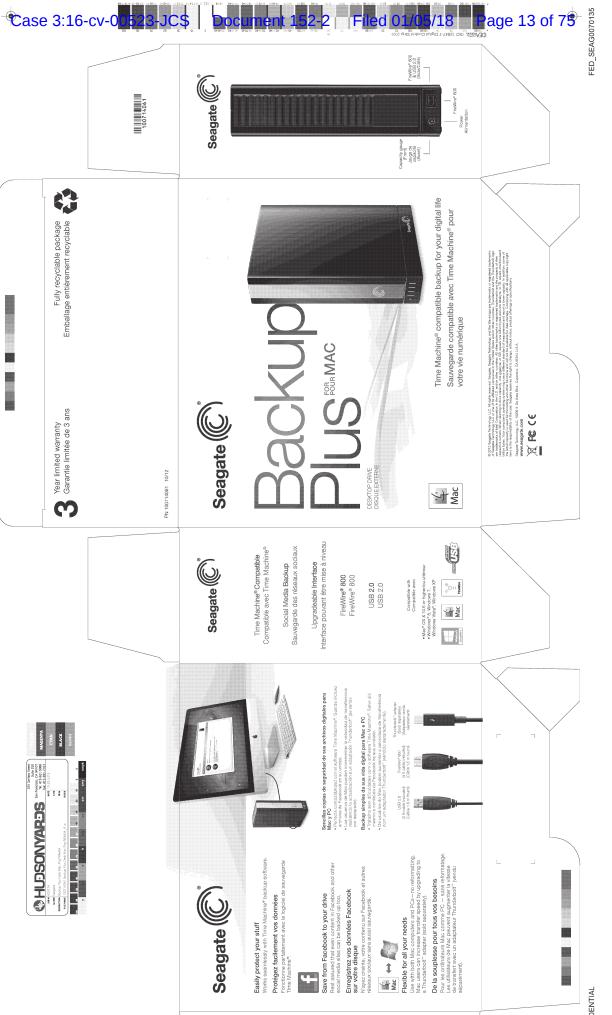
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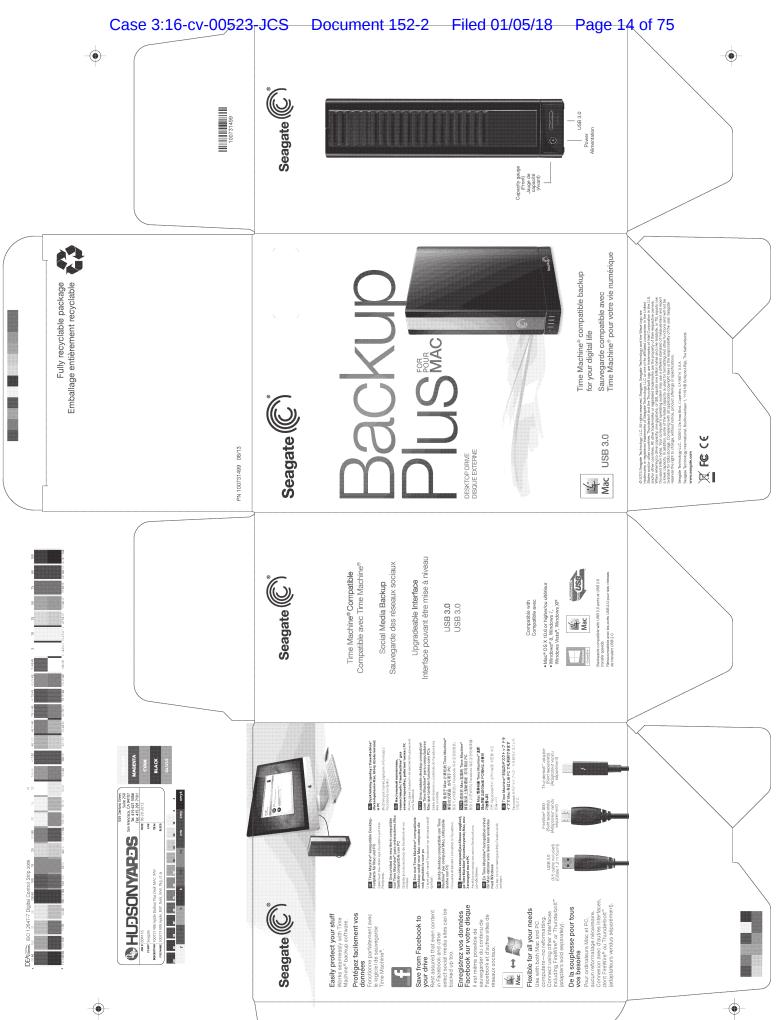
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Easy Backup Sauvegarde aisée

Mobile Device
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Sauvegarde des
données de votre
appareil mobile

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Windows" 8, Windows 7,
 Windows Vista", Windows XP
 Mac OS® X 10.68 or higher/
 ou ultérieur
 iOS 6 or higher/ou ultérieur
 Android 2.3 or higher/ou ultérieur

Backup fácil para seu computador, dispositivos móveis* e sites de

 Sauvegarde facile de votre ordinateur, vos appareils mobiles* et vos réseaux sociaux Utilisation entre Windows et Mac

 Use between Windows and Mac Easy backup for your computer, mobile devices* and social network sites

rede social

• Use entre Windows e Mac
To recurso de backup para dispositivo móvel est
disposivel no inficio de 2014

DESKTOP DRIVE DISQUE DUR EXTERNE

Compatible with/avec:

Social Media Backup Sauvegarde des réseaux sociaux

Copias de segundad sencillas para su ordenador, sus dispositivos méviles* y los sitios web de sus redes sociales.

 Utilicelas entre Windows y Mac. Función de copia de seguridad de los dispositivos disponible a principios de 2014.











USB 3.0

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Power USB 3.0 Imentation

Easy backup for your digital life. For PC and Mac Sauvegarde pour votre vie numérique, en toute simplicité. Pour PC et Mac

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Windows Vista®, Windows 7,
Windows Vista®, Windows XP

*Mac OS® X 10.6.8 or higher

ou utferleur

* IOS 6 or higher/ou utferleur

* Android 2.3 or higher/ou utferleur

DISQUE DUR EXTERNE DESKTOP DRIVE









USB 3.0

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Mobile Device
Backup
Sauvegarde des
données de votre
appareil mobile

Social Media Backup

Sauvegarde des réseaux sociaux

Copias de seguridad sencillas para su ordenador, sus dispositivos móviles y los sitios web de sus redes sociales.

 Easy backup for your computer, mobile devices and social network sites Use between Windows and Mac

Utilicelas entre Windows y Mac.

 Sauvegarde facile de votre ordinateur, vos appareils mobiles et vos réseaux sociaux Utilisation entre Windows et Mac









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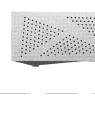
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Time Machine® compatible backup for your digital life Sauvegarde compatible avec $\operatorname{Time}\,\operatorname{Machine}^{\scriptscriptstyle{\oplus}}\,\operatorname{pour}$ votre vie numéríque

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Fig & A in flickr

Time Machine compatible.

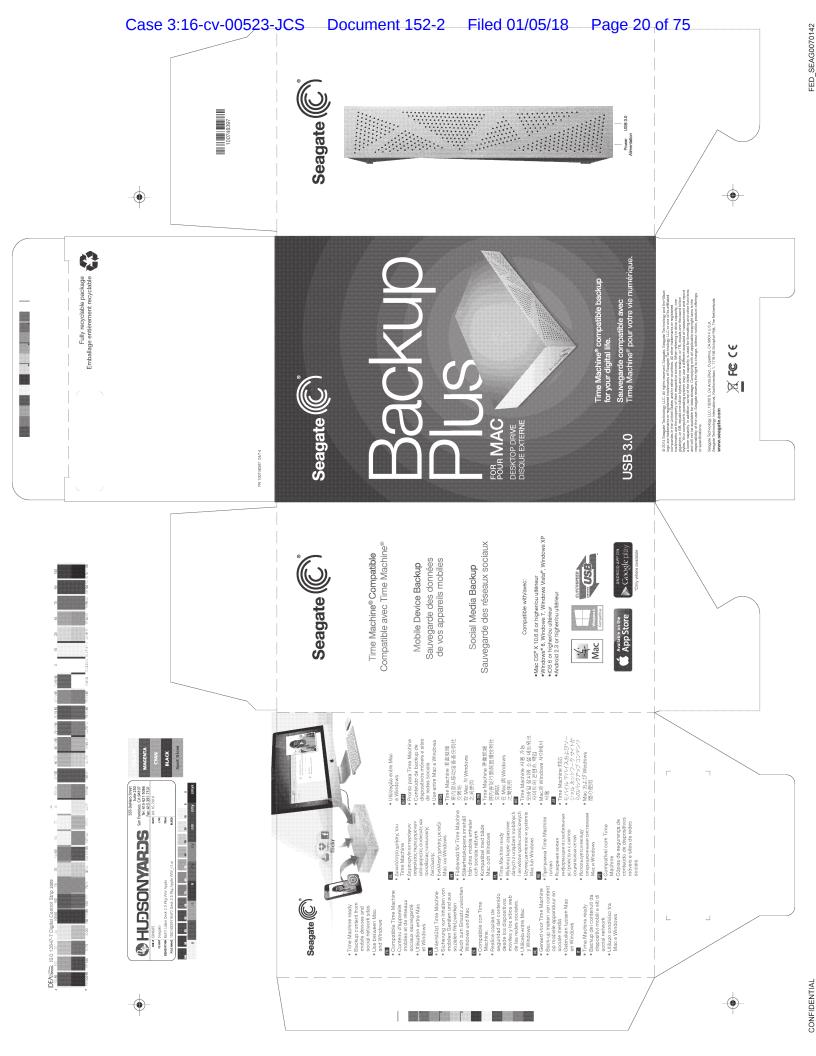
- Backup content from mobile* devices and social network sites Time Machine ready
- Use between Mac and Windows
- Compatible Time Machine

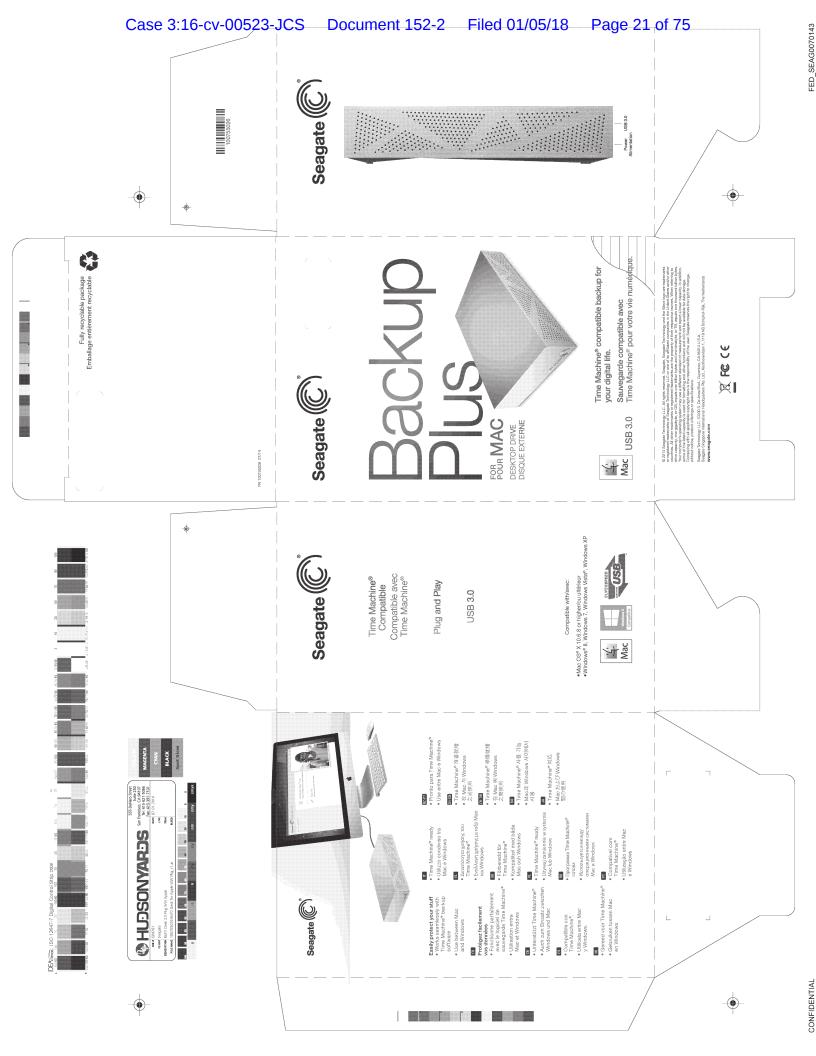
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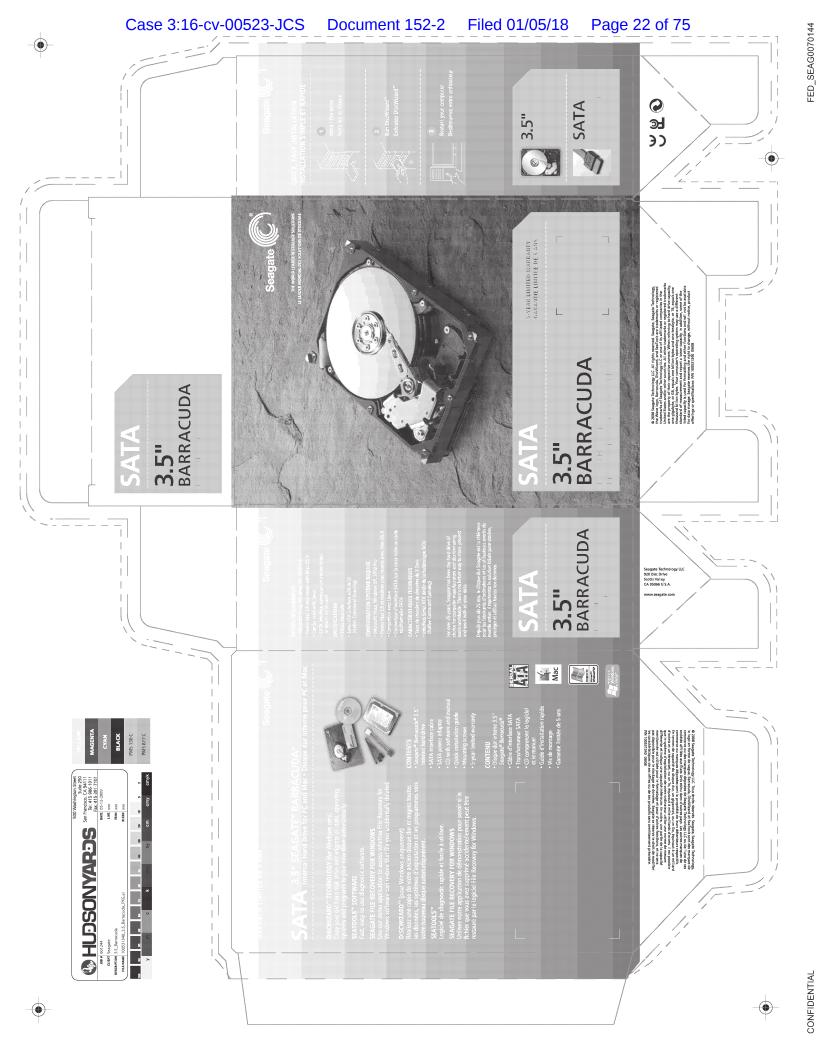
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 Conteúdo de backup de dispositivos móveis* e sites de redes sociais Use entre Mac e Windows O recurso de backup para dispositiv disponível no início de 2014

























High Performance • Hautes Performances

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DESKTOP PC HARD DRIVE DISQUE DUR D'ORDINATEUR DE BUREAU

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Barracuda DESKTOP PC HARD DRIVE DISQUE DUR D'ORDINATEUR DE BUREAU

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Whisper quiet. Minimizes accusite levels laring degrade "Cutelistep" "technology Efrortess: Includes Seagate" DiscWizard software for easy migration from your old hard office. Departable: Gives you peace of mind with Seagate 8.5 year limited versarity

Blazingly fast: Delivers optimum mix of performance and energy efficiency with a 7200 RPM spin speed and up to 32MB of cache

Facilimo: Inclui software Seagate"
DiscWizard" para migração fácil do disco
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Confiável: Oterece tranquilidade com a
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simple: Logiciel Seagate* DiscWizard" spour un transfert facile depuis votre n disque dur.

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Blazingly fast: Delivers optimum mix of performance and energy efficiency with a 7200 RPM spin speed and up to 32MB of cache











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Government-grade Data Security

State-of-the-art Media Streaming

Stream movies, music and photos to man players, game consoles, computers and other devices throughbut your business of home

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s aplicaciones gratuitas pan os iPhone, iPad y Android^a.

Copia de seguridad para ordenadores PC y Mac®

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• Diffusez des films, de la musique et des
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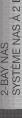






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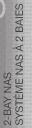
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Suwegarde pour PC et Mac[®]
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Access the from your smarphone or tablet write contine to with the eags for Phone. Plad and Argosiff devices PC and Mac® Computer Backup

* Business grade rector software offers foll
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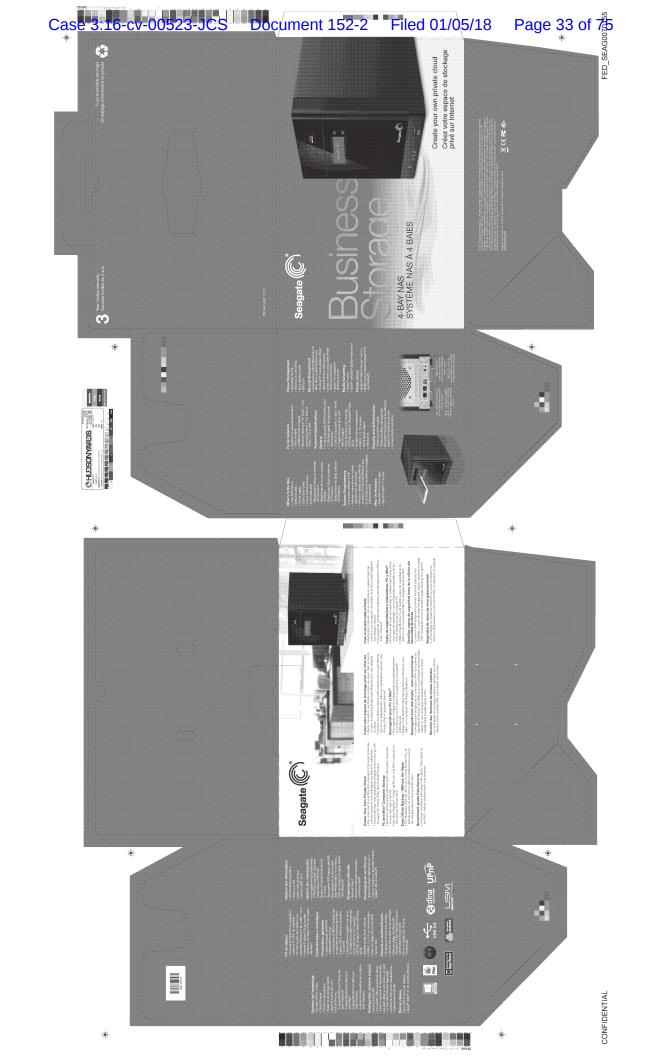


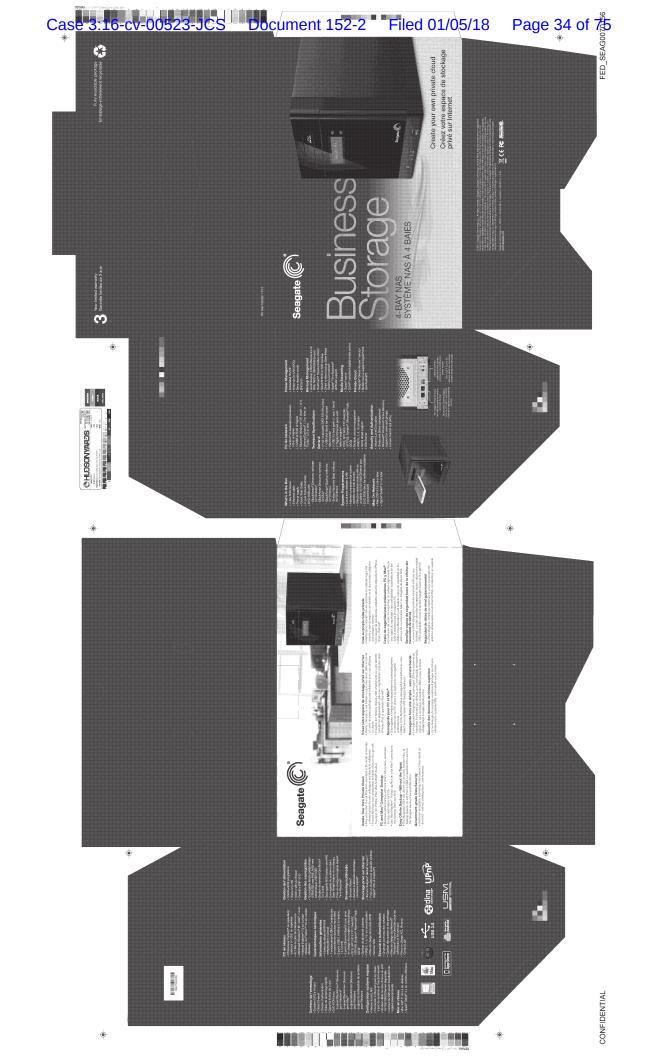


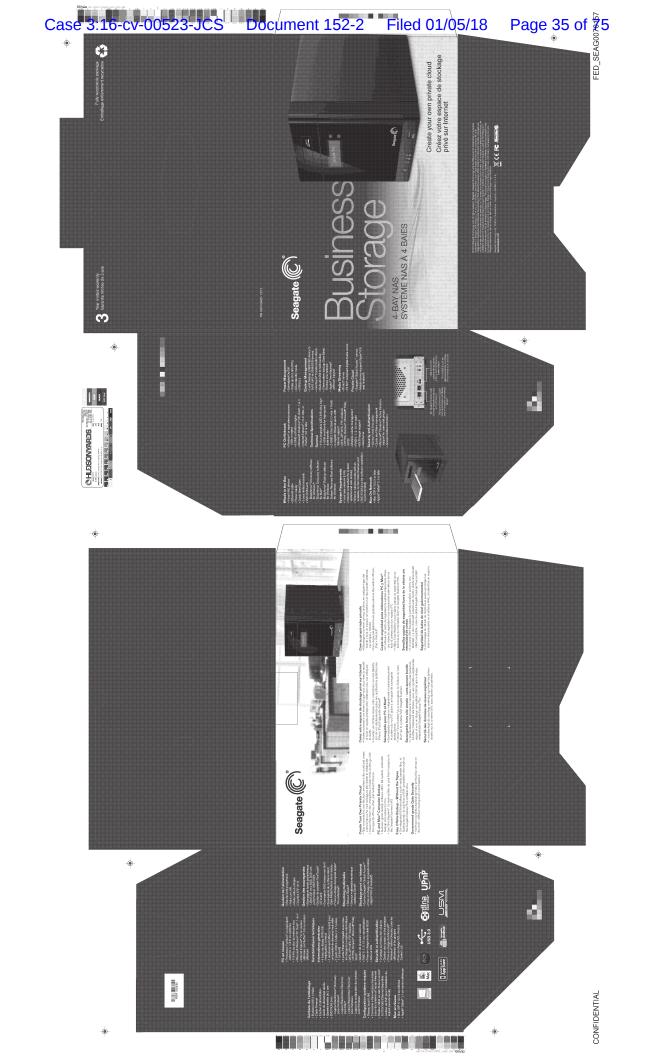


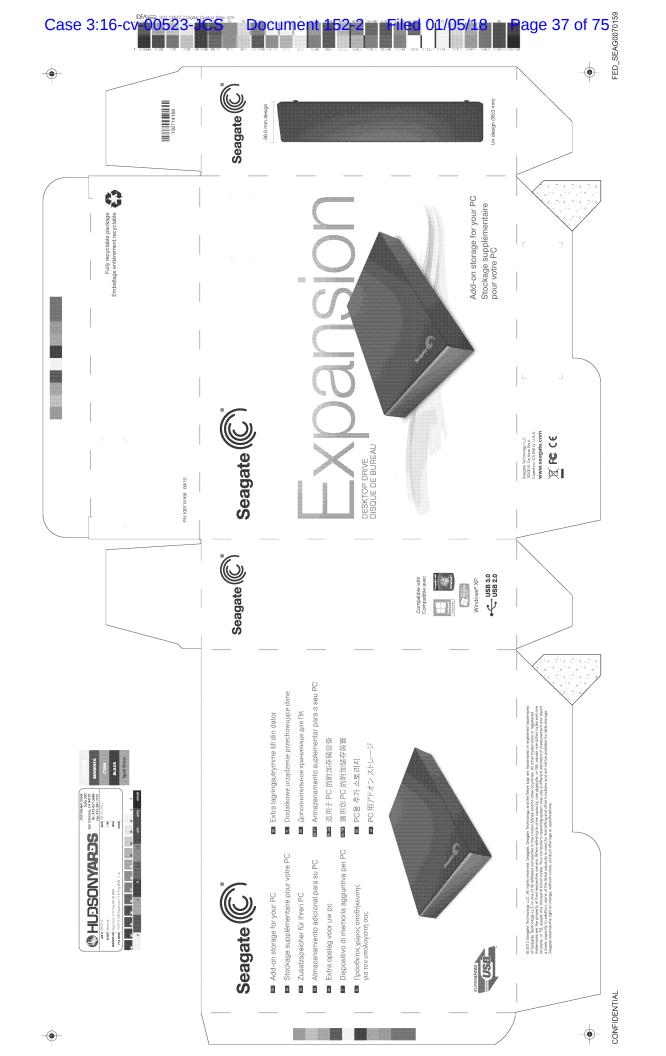
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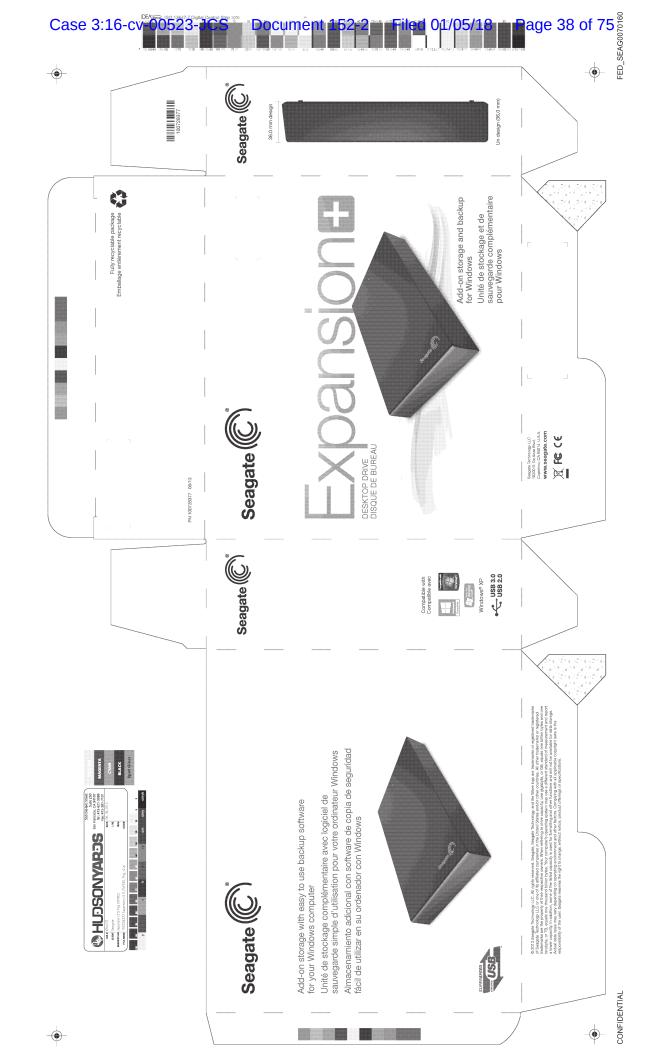


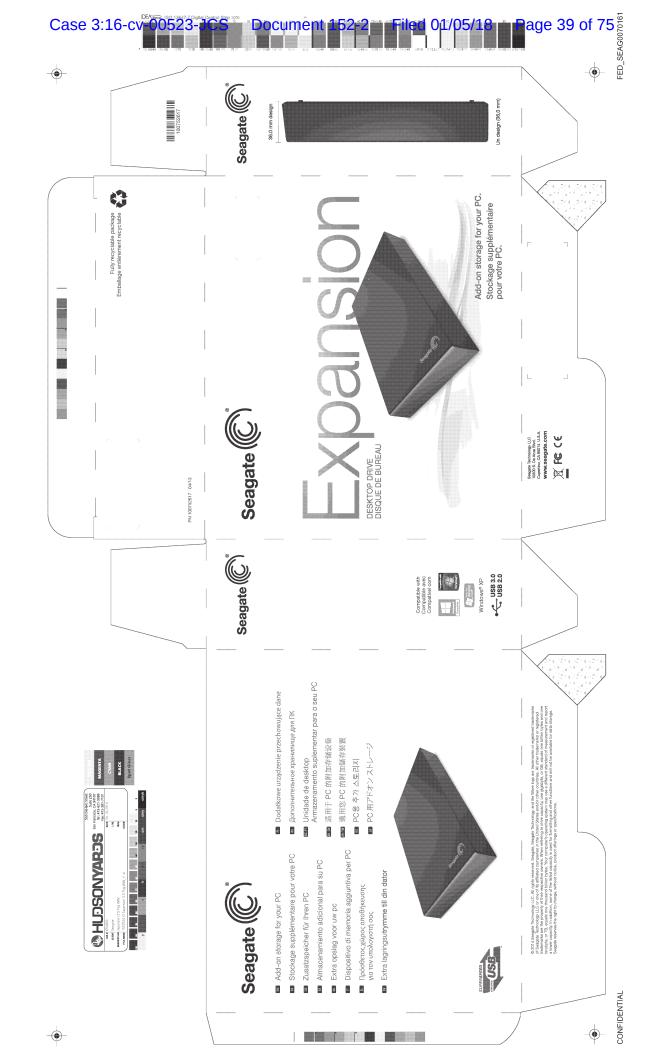


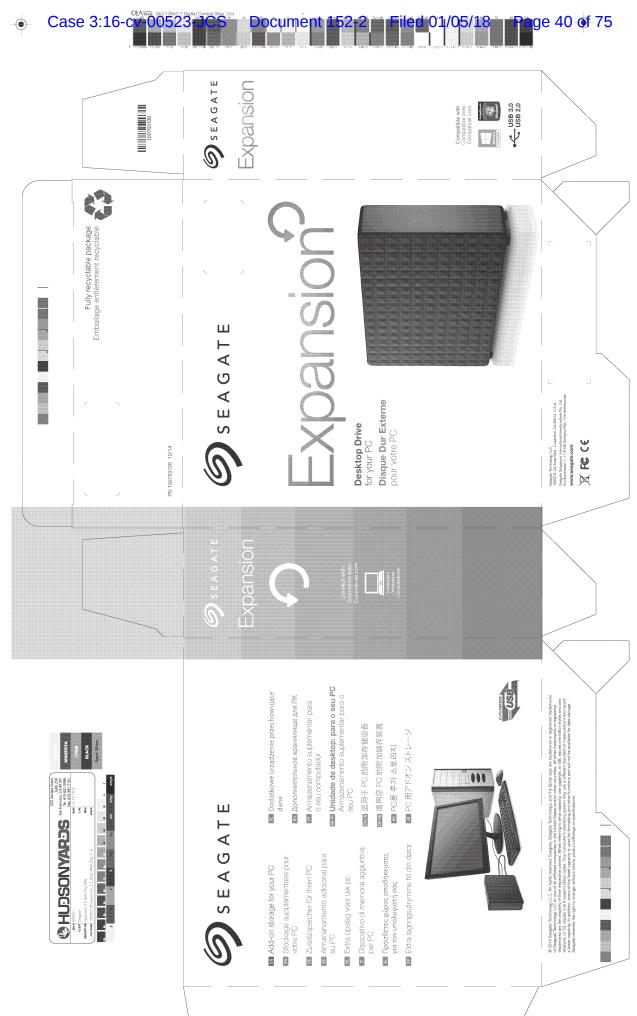












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every to been your backed up files private
and secure

Upgradeable
Essaly upgrade to a faster interface by ewapping out the deaktop adapter*
"Gaffact" Days abupter and separately.

World's Most Upgradeable Hard Drive USB 3.0 upgradeable Easy backup software Secure data encryption

Évolutif vers USB 3.0 Logiciel de sauvegarde simple Cryptage des données sécurisé Le plus évolutif des disques durs

GoFlex Desk FreeAgent

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bear PC & Mac⁵

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Rockit 3.5 Bundle 229.5 x198.7 x 89.5

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orks with PC and Mac® hare movies, photos, music and more between the movies, photos, music and more between a and Mac computers without reformatting." arsatility Like No Other Hard Drive crease, your flexibility by customizing your drive ith easy-to-use add-ons (sold separately) such s a FireWire* 800 or USB 3.0 adapter.

Easy Backup Software with Encryption Automotically and continuously back up your content and help keep files private with optional encryption.

Logiciei de sauvegarde simple avec cryptage Sauvegardez vos données automatiquement et en continu et sécurisez-les par le biais d'un ryptage facultatif.

mpatible PC et Mac^e ertagez vos films, vos photos, votre usique et bien plus encore entre PC et Mac

Une polyvalence inégalée vignmentez votre flexibilité en personnalisant vignue du rave des accessoires supplément endus séparément que l'adaptateur irewire* 800 ou USB 3.0.

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Rockit 3.5 Bundle 229.5 x198.7 x 89.5

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avec logiciel de sauvegarde automatique











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de definarrage en esta de défaillance du système
ou d'africérion par un vints ou un logicilei despion
- Restaurez, faciliement votre système à un instant

Replica auto backup software actually prepares, boots and recovers your PC's entire boot drive contents in the event of a system failure, virus or spyware infection
Easily restore your entire system to a previous
point in time Datajoned for PCs unity (Vineionn² operating patients, pippents, poppents, poppents,

ncludes Replica" Auto Backup Software

Inclui o software de backup automático Replica"

Incluye el software de copia de seguridad automática de Replica

Contenu de la boîte

Inside the Box

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- Chipse or beginning or

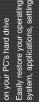
Logiciel de sauvegarde automatique Replica" inclus







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SuperSpeed USB 3.0 y compatible con USB 2.0 Concetle the unidad a un puerfo USB 3.0 para accelerate as velocidades de transferencia hasta 10 veces más que con USB 2.0. Compatibilidad también con puerto que con USB 2.0. Compatibilidad también con puerto

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Rackup Software with Encryption matically and continuously back up your content help keep files private with optional encryption.

SuperSpeed USB 3.0 and USB 2.0 Compatible Connect to a USB 3.0 port to accelerate transfer appeads up to 10x tester than USB 2.0. Backwards compatible with USB 2.0 ports.

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fersatility Like No Other Hard Drive increase your flexibility by customizing your drive with easy-to-use add-one (sold separately) such as a FireWine* 800 adapter. ip lyap. ...

s with PC and Mac®
movies, photos, mustic and more between
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Jusqu'à 10 fois plus rapide qu'avec un port USB 2.0 Logiciel de sauvegarde simple avec cryptage Partagez vos fichiers entre PC et Mac*

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USB 3.0 Plug-and-Play Also works with USB 2.0 Également compatible USB 2.0

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Nenhum outro disco rígido possui tanta versatilida: Aumente a sua flexibilidade personátizando a unidade com suplementos que são fáceis de usar (vendidos separadamente), como o adaptador FireWire® 800.

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USB

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Compatible PC et Mac^a Partagez vos films, vos photos, votre musique et bien plus encore entre PC et Mac sans reformatage.³

ogiciel de sauvegarde simple avec cryptage Sauvegardez vos données automatiquement et en continu et sécurisez-les par le biais d'un cryptage

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Rockit 3.5 Bundle 229.5 x198.7 x 89.5

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casy Backup Software with Encryption Automatically and continuously back up your content and help keep files private with optional encryption.

lersatility Like No Other Hard Drive ncrease your flexibility by customizing your drive with easy-to-use add-ons (sold separately) such as a FreWine* 800 adapter.

SuperSpeed USB 3.0 and USB 2.0 Compatible Connect to a USB 3.0 port to accelerate transfer appeads up to 10x tester than USB 2.0. Backwards compatible with USB 2.0 ports.

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World's Most Versatile Hard Drive Up to 10x faster than USB 2.0 Easy backup software with encryption Share files between PC and Mac® Le plus polyvalent des disques durs

Jusqu'à 10 fois plus rapide qu'avec un port USB 2.0 Logiciel de sauvegarde simple avec cryptage Partagez vos fichiers entre PC et Mac*

FreeAgent

GOFIER DESK

Capacity gauge Jauge de capacité

Activity light Voyant d'activité

Fee PC & Mac*

USB 3.0 Plug-and-Play Also works with USB 2.0 Egalement compatible USB 2.0

FreeAgent GOFIex Desk manufactures

FC CE

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. Mac

USB

Nenhum outro disco rígido possui tanta versatilida: Aumente a sua flexibilidade personátizando a unidade com suplementos que são fáceis de usar (vendidos separadamente), como o adaptador FireWire® 800.

nciona em PC e Mac* mparifire firmas, fotos, músicas e muito mais tre PC e computadores Mac sem necessidade reformatação.*

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Rockit 3.5 Bundle 229.5 x198.7 x 89.5

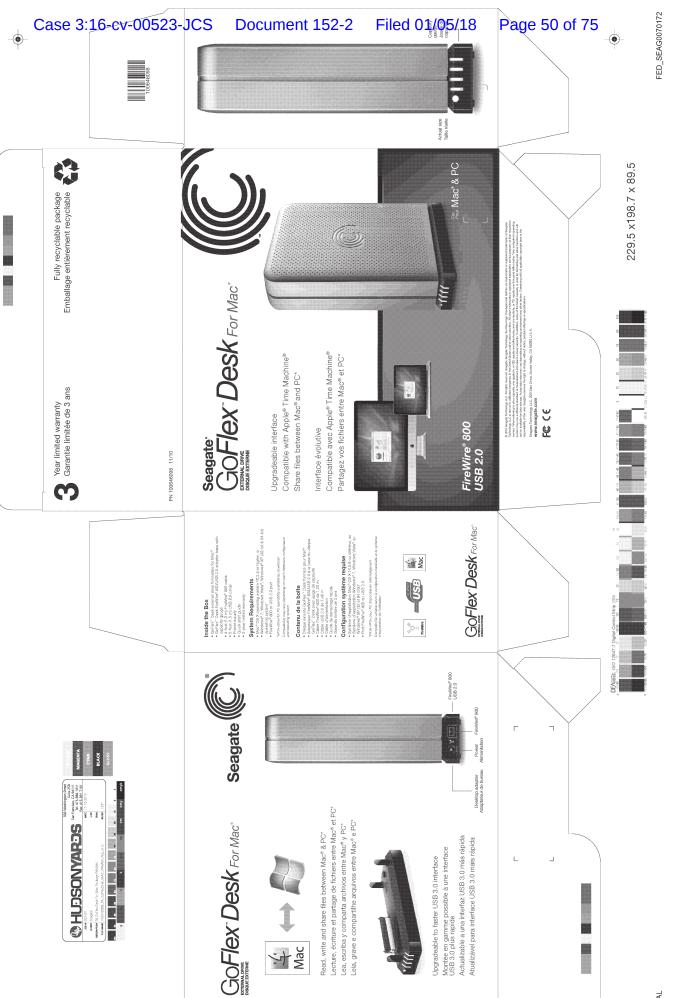
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Rockit 3.5 Bundle 229.5 x198.7 x 89.5

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Logiciel de sauvegarde automatique Replica" inclus

ncludes Replica" Auto Backup Software

Backup EVERYTHING on your PC's hard drive

Sauvegardez TOUT ce qui se trouve sur le disque dur de votre PC USB 3.0 upgradeable

Fonctionne sur les ordinateurs PC et Mac®

Norks with PC and Mac*

Inclui software de backup automático Replica"

luye software de copia de seguridad comática Replica"

iffware de copia de esgunidad automática Regilica anas i micia y recupera todo el contentido de la unidad manque del PC en caso defallos del sistema o cidones de virus o spyware aura con facilidad todo el sistema a un punho anterior

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GOFIEX EXTENSE, HARD DRIVE WITH

Capacity gauge Jauge de capacité

Activity light Voyant d'activité

‱PC & Mac⁴

Funciona em PC e Mac^a

Funciona con PC y Mac*

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Desktop adapter Adaptateur de bureau

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USB 2.0 Plug-and-Play

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Restaurez facilement votre système d'exploitation, vos applications, paramètres et données

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Sauvegardez TOUT ce qui se trouve sur le disque dur de votre PC

Easily restore your operating system, applications, settings and data

Inclui o software de backup automático Replica"

ncluye el software de copia de eguridad automática de Replica"

on your PC's hard drive Backup EVERYTHING

Logiciel de sauvegarde automatique Replica" inclus

Replica auto backup software actually prepares, boots and recovers your PC's entire boot drive contents in the event of a system failure, virus or

includes Replica" Auto Backup Software

spyware infection asily restore your entire system to a prev

GOFIEX DESK EXTENDL HARD BINE WITH REPLICE

USB 3.0 + USB 2.0

Desktop adapter Power Adaptateur de bureau Alimentation

Contenu de la boîte

SUPERSPETO

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Restaurez facilement votre système d'exploitation, vos applications, paramètres et données

Sauvegardez TOUT ce qui se trouve sur le disque dur de votre PC

Easily restore your operating system, applications, settings and data

Backup EVERYTHING on your PC's hard drive

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Logiciel de sauvegarde automatique Replica" inclus

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Includes Replica" Auto Backup Software

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D software de backup automático Replica prepara, inicializa e recupera todo o conteúdo da inidade de inicialização do PC em caso de falha do sistema, ou infecção por virtas ou spryware Inclui o software de backup automático Replica"

Contenu de la boîte

side the Box

System Requirements

Desktop adapter Power Adaptateur de bureau Alimentation

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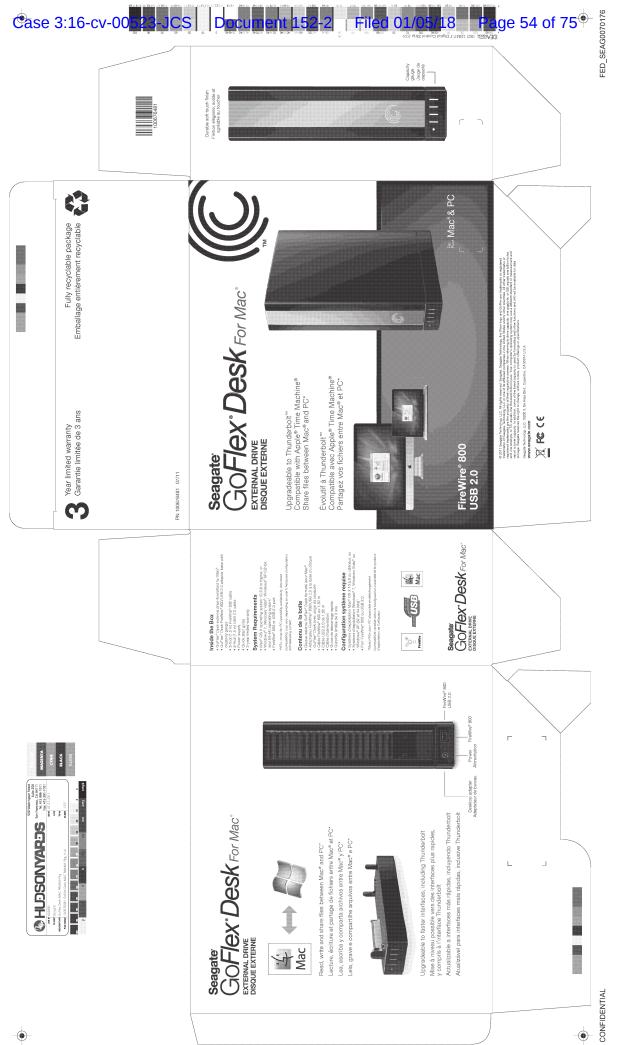
USB 3.0 + USB 2.0

229.5 x198.7 x 89.5

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EXTERNAL DRIVE DISQUE EXTERNE

SuperSpeed USB 3.0 y compatible con USB 2.0 Connecto is unidad a un puerto USB 3.0 para acelerar las velocidades de transferencia hasta 10 veces más que con USB 2.0. Compatibilidad también con puerto USB 2.0. Compatibilidad también con puerto USB 2.0.

rspeed USB 3.0 and USB 2.0 Compatible each to a USB 3.0 port to accelerate transfer ds up to 10x faster than USB 2.0. Backwards satible with USB 2.0 ports.

Seagate GOFIex*Desk

EXTERNAL DRIVE DISQUE EXTERNE

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say Backup Software with Encryption variomatically and continuously back up your conter and help keep files private with optional encryption.

s with PC and Mac® movies, photos, music and more between Mac computers without reformatting.*

atality Like No Other Hard Drive ase your flexibility by customizing your drive assy-to-use add-ons (sold separately) such FleWire" 800 deektop adapter.

Funciona con PC y Mac^a Comparta peliculas, fotos, música y mucho más e ordenadores PC y Mac sin necesidad de formatec

Compativel com SuperSpeed USB 3.0 e USB 2.0 Conacte-se a uma porta USB 3.0 para obter velocidar de transferência al 10 vezes malores do que com a porta USB 2.0. Compatível com as versões anteriore das portas USB 2.0.

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outro disco rígido possul tanta versatili. a sua flexibilidade personalizando a unid: ementos que são fáceis de usar (vendido mente), como o adaptador FireWire® 800.

Easy backup software with encryption Share files between PC and Mac* Streamlined design complements any workspace World's Most Versatile Hard Drive

Le plus polyvalent des disques durs Jusqu'à 10 fois plus rapide qu'avec un port USB 2.0 Logiciel de sauvegarde simple avec cryptage Partagez vos fichiers entre PC et Mac* Un design rationalisé pour agrémenter n'impo quel espace de travail

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USB 3.0+USB 2.0

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Desktop adapter Power USB 3.0 Adaptateur de bureau Alimentation

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Legiciel de sauvegarde simple avec cryptage Sauvegardez vos données automatiquement et en continu et sécurisez-les par le biais d'un cryptage faculatif. mpatible PC et Mac[®] tagez vos films, vos photos, votre musique et n plus encore entre PC et Mac sans reformatago























EXTERNAL DRIVE DISQUE EXTERNE

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Rockit 3.5 Bundle 229.5 x198.7 x 89.5

EXTERNAL DRIVE DISQUE EXTERNE

Rockit 3.5 Bundle 229.5 x198.7 x 89.5

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Rockit 3.5 Bundle 229.5 x198.7 x 89.5



Rockit 3.5 Bundle 229.5 x198.7 x 89.5

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La combinación perfecta de rendimiento y eficiencia energética. La velocidad de 7.200 FBM y la infertaz SATA de 6 Gb/s maximizan el rendimiento menimira que los modos de energías, avarcados reducen el consumo de energías.

Optimum mix of performance and energy efficiency CXOPIPAM and SATA GGIb/s maximize performance while advanced power modes consume less power.

Ultrasilenciosa Reduce al mínimo los niveles de ruido gracias a la tecnologia Seagate QuietStep". Migre fácilmente desde su unidad antigua gracias al software Seagate DiscWizard".

fácil de instalar

Easily migrate from your old drive using Seagate DiscWizard" software. Whisper quiet
Minimizes noise levels using Seagate
QuietStep" technology.

Easy Installation



Uma combinação ideal de desempenho e baixo consumo de energia exceptor de consumo de energia exceptor de edesempenho enquanto os modos de energia avançados consomem menos energia.

Une combinaison optimale de performances et de frifectale et performances et de frifectale et performances et de frifectale et 7200 triminent et frifertales et 750 focks optiminent et performances alors que les modes de friferingles controlles de performances alors que les modes friferingles consommée.

Operação silenciosa Minimiza níveis de ruido usando a tecnología Seagate QuietStep". Fácil instalação Migração fácil da sua unidade antiga usando o software Seagate DiscWizard".

Ultrasilencieux
Il réduit les inveaux sonores grâce à
Il réduit les inveaux sonores grâce à
Il atechnologie Seagate d'uetStep".
Installation simple
Transièrez facilement les données
de voin amén disque avec le logiciel
Seagate Discl/Krard".











Stockage interne pour votre ordinateur de bureau Internal storage for your desktop computer









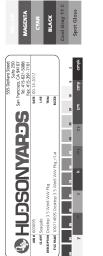








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Drives over 2TB may require a special device driver for Windows to access disk capacity shove 2TB.









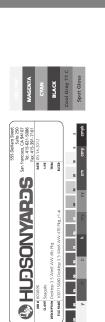
















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Drives over 2TB may require a special devic driver for Windows to access disk capacity sbove 2TB.

Stockage interne haute capacité pour votre ordinateur de bureau High capacity internal storage for your desktop computer

Mac Mac Mac













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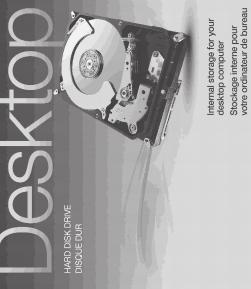
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